

REA LAW JOURNAL

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Page 33

RECENT CASES

Actions - Suit against the Administrator of W.P.A.

Workers in New York W.P.A. project brought action against the Administrator of W.P.A. to restrain the demotion and transfer of certain employees for refusal to submit to fingerprinting. Held, that the Administrator is an agent of the Federal Government and as such cannot be sued individually or in his official capacity. The attempt to sue him individually fails because the plaintiffs cannot accomplish by indirection what they might not do directly against the Administrator in his official capacity. Goldstein v. Sommerville, N.Y. Sup. Ct., Feb. 27, 1939, 6 U.S.L. Week, 935 (1939).

Aviation - Interference with landing field by erection of adjacent power lines.

Company operating a flying field seeks an injunction against utility to remove power lines that have been erected on land adjacent to the field. Held, injunction denied. Under present law the owner of land still owns the use of the space above the land and although flight of aircraft over land is legalized by statute, yet such flight may not interfere with proper use of the land. Capitol Airways v. Indianapolis Power & Lt. Co., 18 N.E. (2d) 776 (Ind. 1939).

Contracts - Necessaries

Plaintiff corporation's salesman installed a refrigerator and a radio for

demonstration purposes in defendant's home during his absence. A few days later, again when defendant husband was absent, the salesman returned and consummated the sale of the above chattels to the wife. She signed her name to the note for the purchase price and to the mortgage securing the name and signed her husband's name also. The plaintiff company now brings an action against the defendant husband alleging liability on two grounds: 1) that the chattels were necessities to the wife and therefore the husband was legally obligated to furnish them, and 2) that by allowing the chattels to remain in the home and not advising plaintiff that he would not pay for them he ratified the transaction. Held, the defendant is not liable. The items were not necessities, at least since the wife already had a radio and an ice-box. Secondly, the acts as stated did not indicate an intention to ratify. Lacaze v. Kelsce, 185 So. 676 (La. App. 1939).

Eminent Domain - Public Purpose

In a general attack on the validity of the Knoxville Housing Authority, the contention was made that the Authority was unconstitutional in that it had been granted the power of eminent domain and that the purpose for which such power was to be exercised was not a public purpose. The purpose was, of course, to take land for slum clearance and housing projects. The court, in upholding the Authority, and the grant of eminent domain stated: "This court long since declared that the term public use is a flexible one. It varies and expands with the growing needs of a more complex social order." Also, it was pointed out that an enterprise "does not lose the

character of a public use because of the fact that its service may be limited by circumstances to a comparatively small part of the public." Furthermore, "The novelty of a purpose does not render it the less a public purpose. The conception of a public purpose must necessarily broaden as the functions of government continue to expand." Knoxville Housing Authority v. Knoxville, 123 S. W. (2d) 1085 (Tenn. 1939).

Municipal Corporations - Injunction by private utility against competition by municipality.

Public utility, operating a gas company under franchise in the defendant city, seeks to enjoin the city from proceeding to construct a gas system with the proceeds of revenue bonds. Held, whether the city had the power to construct such a system or not, since the city could compete with the utility the latter could not "question the means or methods by which this competition is launched." Furthermore, the city did have the power to engage in such activity. Arkansas Louisiana Gas Co. v. Texarkana, 100 F. (2d) 652 (C.C.A. 5th, 1938).

Negligence - Failure to insulate wires.

X came in contact with defendant's electric wire which had broken between two poles. The primary legal problem was whether the failure to insulate the wires was in itself negligence. Held, that so long as the equipment was kept in a safe condition there was no absolute duty to insulate all wires. Arkansas Gen. Utilities Co. v. Wilson, 122 S.W. (2d) 956 (Ark. 1938). Accord: Fredericks' Adm'r v. Kentucky Utilities Co., 122 S.W. (2d) 1000 (Ky. 1938).

Oregon Peoples Utility District Act - Constitutionality

Board of Directors of a Peoples Utility District filed a petition under the Act (Ore. Code (Supp. 1935) § 56-3445) for a judicial examination as to the legality of the proceedings in connection with the creation of the district. A taxpayer demurred to the petition setting up alleged defects in the Act, the proceedings, and the general question of constitutionality. Held, demurrer overruled. In re Board of Directors of Tillamook Peoples Utility District, 86 P. (2d) 460 (Ore. 1939).

The court held that the legality of the district would be determined by the laws relating to municipal corporations rather than by laws applicable to special assessment or local improvement districts. Since the district is created to conserve the water and power resources of the state, it clearly performs a municipal function. Therefore, hearings on matters such as boundaries and benefits are not conditions precedent to legality. The Act is a constitutional exercise of the legislature's power.

Public Service Corporations - Duty to render service to new owner who refuses to pay arrearages of former owner.

The HOLC filed a petition for a writ of mandamus to compel the city of Baltimore to restore water service to petitioner's property. The city defends on the ground that the owner of the property, prior to ownership by HOLC and at the time when the HOLC was a mortgagee, had not paid water rent charges and that after default and possession by the HOLC the latter offered to pay future charges but refused to pay arrearages. Held, that the city was, as respects this service, a public utility corporation and thus must serve the new owner despite his refusal to pay arrearages due by the former owner. HOLC v. Baltimore, 3 A. (2d) 747 (Md. 1939).

REA LAW JOURNAL

A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

Published Monthly

The Journal is informational only and should in no wise be interpreted as expressing the views of the Rural Electrification Administration or any division thereof.

Address "Suggestions and contributions to the Editorial Office-- REA, Room 204, 1518 "K" Street, Washington, D. C.

ADMINISTRATIVE INTERPRETATIONS

Electric Membership Corporations Service in an adjoining state

The Georgia Attorney General was requested to rule on whether a rural electrification project from an adjoining state could extend its lines into Georgia and serve Georgia members. Ruled, such service is proper. The Attorney General indicates, however, that there may be difficulties in the way of obtaining easements and rights-of-way. He states that the foreign cooperative may not exercise the condemnation powers granted in the Georgia Electric Membership Corporation Act because the powers in that Act are expressly confined to corporations organized under it. Furthermore, the General Act granting electric power corporations the power of condemnation is limited to such corporations that serve the public and cooperative corporations serving only its members cannot come within that provision since they do not serve the public. The Attorney General concludes that if the foreign cooperative obtained the necessary rights-of-way without resort to eminent domain, there was no legal reason why it might

not extend its lines into Georgia. In re Opinion Georgia Attorney General, Nov. 2, 1938, CCH Pub. Util. & Carr. Serv., p. 7023 (February 13, 1939).

Exemption of Rural Electrification Cooperatives from Motor Vehicle Registration Fees

Kentucky statute exempting rural electrification cooperatives from all taxes and imposing in lieu thereof an annual tax of \$10 reads:

"Corporations formed hereunder shall be exempt from all franchise taxes, profit taxes, gross and net taxes, occupation taxes, privilege taxes, income taxes,...and from all excise taxes whatsoever, any statute now existing or hereafter passed to the contrary notwithstanding."

Question certified to the Attorney General as to whether this provision exempted such cooperatives from motor vehicle registration taxes. The Attorney General declines to rule stating that the matter can only be solved by judicial decision. He indicates that the problem is whether a motor vehicle registration fee is an exaction under the police power for registration of motor vehicles or, on the other hand, a tax. If the latter, of course, the cooperative is exempt. If the former, the matter is in doubt and should be left, the Attorney General feels, to the courts. Op. Ky. Atty. Gen., Dec. 19, 1938, Prentice Hall St. & Loc. Tax. Serv. Para. 44,126 (February 28, 1939).

RECENT STATUTES

ALABAMA

H.B. No. 82, 1939

Alabama Revenue Act of 1939 contains, in addition to all taxes formerly levied, a gross receipts tax on the sale of mer-

chandise, commodities and services. Section 5 (k)(2) contains an exemption of the gross receipts of the sale of coal or coke used in the generation of electric power. There is also exempted in (q) the gross proceeds of sales of electricity "the rates and charges for which, when sold by public utilities, are customarily fixed and determined by the Public Service Commission of Alabama or like regulatory bodies." (Approved February 8, 1939).

ARKANSAS

Ark. Act No. 39, 1939

New fees set for foreign corporation qualifying in Arkansas-1/100 of 1% of first \$10,000 of capital represented by property or business in Arkansas is the assessment. (Higher tables for larger amounts). \$2.50 for appointment of resident agent. (Approved February 6, 1939).

CALIFORNIA

Calif. Laws, c. 36 & c. 37, 1939

Acts regulating the licensing of civil engineers and contractors. (Approved February 3, 1939).

GEORGIA

H. B. NO. 34, 1939

Tax deed shall not be considered evidence of title unless the deed is seven years old. (Approved February 21, 1939).

INDIANA

H. B. No. 15, 1939

Court reporters now have the power to take acknowledgements to mortgages, etc. (Approved February 18, 1939).

S. B. No. 52, 1939

Act exempts all municipally owned properties from all taxes, except the gross income tax. (Approved February 23, 1939).

MAINE

Me.Laws, c.20, H.B. No.281, 1939

Section 22 of the Revised Statutes, c. 56, amended by adding the provision that the power to make and later bylaws shall be vested in the stockholders but that corporation may, in its certificate of organization or in the bylaws confer the power on the directors. Bylaws made by the directors under such a power may be altered or repealed by either the directors or the stockholders. The corporation may, in its bylaws determine the manner and conduct of meetings, quorum requirements, etc. (Approved February 28, 1939).

MINNESOTA

Minn. Laws, c. 7, 1939

Moratorium Act grants certain relief to mortgagor. However, it is expressly provided that the Act shall not apply to mortgages held by the United States or any agency thereof. (Approved February 4, 1939).

NORTH DAKOTA

S. B. No. 23, 1939

Comp. Laws, 1913, section 4535, is amended to read "A corporation may, by its bylaws, when no other provision is expressly made, provide [in addition to the former provisions/:

- (4) the time, manner of election, tenure of officers; mode and manner of giving notice of election;
- (6) the manner of election and tenure of office of all officers other than directors.

(Approved February 18, 1939).

OREGON

S. B. No. 74, 1939

Oregon Code (1935 Supp.) section 23-263 is amended to change provisions pertaining to legal service on foreign

corporations. (Approved February 6, 1939).

H. B. No. 77, 1939

Act amends the definitions in the Revenue Bond Act of 1937. (Approved February 14, 1939).

WYOMING

S. B. No. 16, 1939

Wyoming General Incorporation Act (Wyo. Rev. Stats. (1931) § 28-101 et seq.) amended and revised as follows:

Section 28-101: The purposes of incorporation are broadened to include "any one line or department of business which natural persons may lawfully conduct...."

Sections 28-103, 120, 125, 127, 130, 202, 203 and 1110 are repealed.

Section 28-107. The fee for incorporation is reduced to \$2.50.

Section 20. Foreign corporations doing business in Wyoming without qualifying are precluded from maintaining action in tort or contract. (This section is a substitution for other repealed penalties.)

Wyo. Enrolled Act No. 36,

H. B. No. 39, 1939

Wyoming Act passed to promote rural electrification by providing for exemptions for five years. The act reads: "The property of non-profit cooperative corporations or associations engaged in rural electrification within the State of Wyoming shall be exempt from taxes annually during the use of such property for rural electrification purposes, for a period of five years." (Approved February 11, 1939).

LEGAL MEMORANDA RECEIVED IN FEBRUARY

865. Study of the mortgaging of property to be acquired.
Cohen and Gerber to O'Callaghan

Contains discussion of general problems supplemented by sections dealing with the law of each state and territory.

881. Validity of contracts executed by public corporate officers eo nomine.
Gerber to Lamberton

Discusses: 1. Problem of consideration. 2. Problem of attack by the corporation under fiduciary duty rule.

883. Validity of notes and mortgages executed before required amount of capital stock is paid in.
Hoyt to Moss

Special reference is made to Kansas law, but general law is also discussed.

884. New Hampshire Laws relating to the incorporation of REA borrowers.
Bullock to Lamberton

Includes a study of whether New Hampshire public utilities have exclusive franchises.

885. Meter deposits - trust or debt.
Broderick to Helfrich

887. Service by Vermont cooperative to Vermont town.
Bullock to Mitch

888. The importance of a pledge of income in the REA trust indenture.
Gerber and Cohen to O'Callaghan and Clark

889. Device for obtaining security for consumer's installment loans.
Lett to O'Callaghan and Gamer

891. Validity of note maturing in 25 years where statute limits such notes to 20 years.
Hertz to O'Callaghan
892. Jurisdiction of the public service commission of Kentucky respecting construction of telephone and electric transmission lines.
Rushmer to Lamberton
893. List of all Oklahoma liens.
Hertz to Gorrin
894. Attaching map of proposed territory as preemption of territory.
Winokur to Lamberton
895. Transfer of consumer obligations to United States as security for appliance loans.
Lett to O'Callaghan and Gamer
896. Necessity of Ohio cooperative qualifying to do business in Indiana.
Hertz to Penstone
899. Amendment of mortgage to release property from lien and thereby increase priority of the mortgage.
Broderick to O'Callaghan
900. Power of directors in North Carolina to execute mortgage without consent of members.
Winokur to Yarley
901. Incorporation of proposed association of cooperatives and public power systems under D.C. laws.
Bullock to Nicholson

Tax Memoranda

117. Payment of Wisconsin ad valorem taxes under protest.
Altkrug to Nicholson
118. Washington taxes.
Altkrug to Travis
119. Taxes involved in sale of private utility lines to cooperative (Kentucky).
L. Jones to Rushmer

120. North Dakota property taxes.
L. Jones to Rushmer
121. Taxation provision in proposed Oklahoma Model Act.
L. Jones to O'Callaghan
122. Taxation of coal stored by Wisconsin cooperative.
L. Jones to Rushmer
124. Wisconsin taxes - non-payment problems.
Altkrug to Nicholson
125. Tax problems involved in use of cooperatives rather than utility districts in Oregon.
L. Jones to Cohen
126. Taxation fees and exemptions in Arkansas.
L. Jones to Nicholson

Litigation Memoranda

- L.51 Effect of ratification or estoppel upon ultra vires and/or unauthorized acts of general agent (Iowa).
Hertz to Lamberton and Gamer

Discussion of pleadings, burden of proof, etc.
- L.52 Time for filing amendments to pleadings in Georgia
Winokur to Lamberton
- L.53 Mechanic's lien law in Indiana - Discussion of whether a laborer employed by a project engineer to stake out lines can acquire a mechanic's lien on the cooperative's lines when completed.
Broderick to Helfrich

REVIEWING THE LAW REVIEWS

- Uhlman, The Legal Status of Corporate Directors (1939) 19 Bost. U. L. Rev. 12.
A discussion of the personal liability of corporate directors as to stock-

holders, creditors and other individuals. The author concludes that such liability does not arise either ex delicto or ex contractu, but is a liability which "must as a rule be defined by standards which are inherent in the law of corporate directors."

Shea, Overcrowded?-- The Price of Certain Remedies (1939) 39 Col. L. Rev. 191.

A study of the problem of admissions to the Law Schools and the Bar.

Note, Liability of Directors for Taking Corporate Opportunities, Using Corporate Facilities, or Engaging in a Competing Business (1939) 39 Col. L. Rev. 219.

Bauer, Public Policy Concept of Valuation for Purposes of Public Utility Rate Control (1939) 27 Geo. L. J. 403.

Another argument for the prudent investment criterion as the proper rate base.

Note, The Declaratory Judgment Act in Public Law Controversies (1939) 7 Geo. Wash. L. Rev. 514.

A resume of the cases in which the Federal Declaratory Judgment Act has been used to determine the constitutionality of federal statutes.

Dewey, The Transfer Agent's Dilemma: Conflicting Claims to Shares of Stock (1939) 52 Harv. L. Rev. 553.

A discussion of the liability of corporations for the wrongful transfer or refusal to transfer shares of stock, with suggestions for proposed legisla-

Hale, The "Fair Value" Merry-Go-Round, 1898 to 1938: A Forty-Year Journey from Rates-Based-On-Value to Value-Based-On-Rates (1939) 33 Ill. L. Rev. 517.

As its title indicates, a run through the cases on rate valuation.

Powell, Construction of Written Instruments (1939) 14 Ind. L. J. 199.

The first half of a discussion of "one of the oldest processes in life."

Note, Doctrine of Marshaling of Assets and Securities in Iowa (1939) 24 Iowa L. Rev. 328.

Long, A Warning Signal for Municipal Bondholders: Some Implications of Erie Railroad v. Tompkins (1939) 37 Mich. L. Rev. 589.

The forecast that municipal bondholders may be some the worse if state law, and not federal law, is to determine the validity of municipal obligations.

Note, Availability to Sureties of Statutes Modifying Mortgage Deficiency Judgment (1939) 17 N.C. L. Rev. 179.

The discussion is based upon the North Carolina Mortgage Deficiency Act.

Russell, Mutual Water Companies in California (1939) 12 So. Calif. L. Rev. 155.

A discussion of the problems arising out of the fact that these companies differ from ordinary corporations in 1) the nature of the assets held (water rights and canal systems) and 2) the major purpose of existence - the corporation is

not organized for profit, but rather to distribute water to its shareholders only.

Daggett, The Chattel Mortgage in Louisiana (1939) 13 Tulane L. Rev. 234.

The concluding installment, the first having appeared in (1938) Tulane L. Rev. 19.

Note, Necessity of Application to Shareholders in Derivative Suits (1939) 6 U. of Chi. L. Rev. 269.

The writer believes that with rare exceptions no such need exists.

Banks, Indenture Securities and the Barkley Bill (1939) 48 Yale L. J. 533.

A short history of the corporate indenture is included.

Note, Suspension of Corporate Charter for Nonpayment of Franchise Tax (1939) 48 Yale L. J. 650.

Recent Case, Subrogation of Purchaser to Rights of Senior Mortgagee Against Junior Encumbrancers (1939) 48 Yale L. J. 683.

BOOK REVIEWS

Service Charges in Gas and Electric Rates. By Hubert Frank Havlik.
Columbia University Press.
1938. \$2.75

The author makes no attempt to test the operating expenses reported by utility companies to see whether or not

they are necessary or reasonable", but concerns himself "simply with types of schedules that are used by many companies in getting the revenues to which they are entitled by law." Within these limits, the book presents a broad study, heavily documented with references to legal opinions on rate cases, to commission rulings and reports and to the treatises of rate economists.

It is stated at the outset that the term "service charge" has no generally accepted meaning. However, the author analyzes the various meanings applied to it, discusses their relative merits and the public's reaction to them, and indicates present trends. He succeeds, by the very objectivity of his research, in convincing at least one consumer or "customer" that the utility industry by and large is opportunistic rather than scientific in the setting of rates and service charges and therefore bears constant watching by the public that pays the bill.

According to the utility company, "the service-charge rate makes each customer pay his just share of costs, removes rate discrimination, promotes a liberal use of service by those who need it, and enables the company to collect adequate, and perhaps larger, revenues." From the point of view of benevolent capitalism, this is a fair statement of objectives. How is it carried out? And what do different utilities mean by a service charge?

The simplest definition is a charge to cover customer costs "traceable directly to the fact of each customer's continuing connection." But sometimes it is loaded with part or all of the demand costs. In practice, a service charge may mean a fixed charge to be paid by a customer, in addition to, or rather ahead of, the charge he pays for the amount of gas or electricity he actually uses. Or it may be in the form of a minimum charge he must pay whether or not he uses any service, the charge to be absorbed in his service bill if the service used exceeds the minimum charge. Or it may be contained in an

initial charge under which he is entitled to a reasonable amount of service, or in an initial-lock-minimum charge or in a minimum-block charge. Instead of being applied on each meter or customer, a service charge may be applied on the basis of number of rooms served, or of the floor area covered. There seems to be no generally effective rule.

In the determination of the amount of the service charge there is an even greater latitude of choice. It may be variable or uniform, depending on consumer density, individual consumer demand and other cost factors the rate analyst may decide to consider. It may be based on the "broad view of customer costs" which loads it with a large part of distribution investment and operating expense, or it may be based on the "narrow view of customer costs" which recognizes only the costs caused by con-

necting a particular customer to the system. Or it may be anything in between. In actual practice, it often seems to be just as much as the public will stand for without squawking so loud that state commissions find it prudent to interfere.

Besides dealing with the various present aspects of service charges, the author devotes a chapter to the history of service and minimum charges, deals with the relationship between rates and consumption and offers several comparative tables on customer costs. The book should prove of definite value to rate analysts and to attorneys concerned with rate matters.

Udo Rall
REA Cooperative
Consultant

